

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

&

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

RCRev..No. 221 of 2006()

**RCA.131/2005 of RENT CONTROL APPELLATE AUTHORITY & ADDL.
DISTRICT COURT-II, KOZHIKODE**

RCP.23/2001 of PRL.M.C. & RENT CONTROL COURT,KOZHIKODE-II

REVISION PETITIONER/APPELLANTS/RESPONDENTS:

- 1. THAZHEPADIKKAL VASANTHA,
AGED 59 YEARS, W/O.LATE VELAYUDHAN.**
- 2. THAZHEPADIKKAL VIJAYAKUMARI,
AGED 36 YEARS, D/O.LATE VELAYUDHAN.**
- 3. THEZHEPADIKKAL VIJAYAKUMAR,
AGED 34 YEARS, S/O.LATE VELAYUDHAN.**
- 4. THAZHEPADIKKAL VINODINI,
AGED 31 YEARS, D/O.LATE VELAYUDHAN.**
- 5. THAZHEPADIKKAL VISWALATHA,
AGED 29 YEARS, D/O.LATE VELAYUDHAN.**
- 6. THAZHEPADIKKAL VISWAPRABHA, AGED 27
YEARS, D/O.LATE VELAYUDHAN.**
- 7. THAZHEPADIKKAL VINEETHA,
AGED 34 YEARS, D/O.LATE VELAYUDHAN.
(REVISION PETITIONERS 1 TO 7 ARE RESIDING AT
CHERUKULATHUR AMSOM, PUVVATTUPARAMBA DESOM,
KOZHIKODE TALUK AND DISTRICT).**
- 8. LEELAVATHY, W/O.BALASUBRAMANYAN,
AGED 55 YEARS, VIJAYA INDUSTRIES, BUILDING
NO.IV/754,
PERUVAYAL GRAMA PANCHAYATH, PERUVAYAL P.O.,
CHERUKULATHU AMSOM, PUVVATTUPARAMBA DESOM,
KOZHIKODE TALUK AND DISTRICT.**

RCR 221/2006

**9. T.P.SANU @ SHANUPRASAD, AGED 30 YEARS,
S/O.BALASUBRAMANYAN, MANDAKASSERY (H),
PERUMANNA DESOM, POOVATTUPARAMBA, KOZHIKODE
TALUK.**

BY ADV. SRI.SANTHARAM.P

RESPONDENT:RESPONDENT/PETITIONER

**SMT.GIRIJA, W/O.SUNDARAN,
RESIDING AT OORANGATTUPARAMBIL,
MAVOOR AMSOM DESOM, KOZHIKODE TALUK AND DISTRICT.**

**BY ADV. SRI.P.SANJAY
SRI.A.PARVATHI MENON**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
06/03/2007, THE COURT ON 21/03/2007 PASSED THE FOLLOWING:**

RCR NO.221/2006

ORDER IN I.A.NO.1496/2006 IN RCR NO.221/2006

DISMISSED

21/03/2007

**SD/-
P.R.RAMAN, JUDGE**

**SD/-
ANTONY DOMINIC, JUDGE**

//TRUE COPY//

P.R.RAMAN & ANTONY DOMINIC, JJ.
=====

R.C.R. NO.221 OF 2006
=====

Dated this the 21st day of March, 2007

O R D E R

Antony Dominic, J.

1. Tenants against whom RCP No.23 of 2001 on the file of the Rent Control Court, Kozhikode was filed and whose eviction was confirmed in RCA No. 131 of 2005 by the Rent Control Appellate Authority, Kozhikode, are Revision Petitioners No.1 to 7 herein.
2. Brief facts of the case are that as per Ext.A1 Cooliee Kacheet dated 26.04.1980, Sundaran, the husband of the petitioner in the Rent Control Court, had let out the petition scheduled premises to late Velayudhan, husband of the 1st respondent and father of respondents 2 to 7 in the R.C.P, who are petitioners 2 to 7 in this Revision Petition. The monthly rent fixed in Ext.A1 was Rs.90/-. It is stated that Sundaran had filed RCP 148/88 seeking eviction of the tenant, urging grounds under Section 11(2)(b), 11(3) and 11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act 1965 (hereinafter referred to as the 'Act' for short) and it was allowed under Section 11(2)(b) and disallowed under Section 11(3) and 11(4) (ii). The landlord had filed RCA No.171/1989 and on its dismissal, filed CRP No.483 of 1994 before this Court, which

was disposed of by Ext.A3 order dated 29.09.2000, enhancing the rent to Rs.200/- per month with effect from 01.10.2000. During the pendency of RCA No.171 of 1989, Velayudhan expired in 1990 and thereupon, respondents 1 to 7 being his legal representatives, were impleaded in the proceedings.

3. Subsequently, the respondent herein filed RCP No.23 of 2001, urging grounds under Section 11(2) (b), 11(3) and 11(4) (i) of the Act. It was stated that her husband Sundaran had executed Ext.A6 Settlement Deed No.733/1992 dated 24.02.1992 in her favour and that she had informed the tenants about the transfer of ownership and demanded payment of rent, which was refused by them. She had thereupon sent Ext.A2 notice dated 27.01.2001 which also was not complied with. According to her respondents 1 to 7 in the RCP, being the legal heirs of late Velayudhan, had kept rent in arrears at Rs.90/- per month and Rs.200/- per month with effect from 01.10.2000. She also stated that her husband who was an employee of Gwalior Rayons, Mavoor lost employment on its closure and that the family is in poverty and financial crisis and that her dependant son, Sajeew Kumar, though qualified, was unemployed and for establishing an industry for the livelihood of the family, she sought eviction of the tenants. It was also stated that respondents 1 to 7 herein were not running any business in the premises and that they had sublet the premises to the 8th respondent and her son without her

consent. According to her respondents 1 to 7 were not depending upon the income from the premises.

4. Before the Rent Control Court, witnesses were examined by both sides and documents were also marked. The Rent Control Court by its order dated 26.03.2005 allowed the petition on grounds under Section 11(2)(b), 11(3) and 11(4)(i) of the Act and directed the tenants to surrender vacant possession of the scheduled premises within two months. The tenants and the alleged sub lessees, filed Appeal before the Rent Control Appellate Authority, Kozhikode as RCA No.131 of 2005, which was dismissed by judgment dated 04.02.2006. It is aggrieved by the orders of the Rent Control Court as affirmed by the Rent Control Appellate Authority, the tenants and the sub lessees have filed this Revision Petition.
5. The counsel for the petitioners submitted that the Rent Control Petition was not maintainable in view of the previous proceedings between the parties. According to him there was no change of circumstance in order to maintain a fresh petition seeking eviction of the tenants. He would also contend that Ext.A6 settlement deed was a sham document and could not have been relied on for any purpose. He would contend that according to the tenants Sundaran continued to be the landlord and that the denial of title of the landlord being a bonafide one, the Rent Control Court ought not have entertained the

petition. Counsel also submitted that there was no arrears of rent and also questioned the bonafides of the need urged by the respondent. It was contended that the finding of sub lease is erroneous and perverse and according to him the petition ought to have been dismissed.

6. The counsel for the respondent landlord supported the findings of the courts below. According to her, the Rent Control Court and the Appellate Authority have appreciated the evidence, both oral and documentary, and arrived at factual findings which do not call for any reversal in a revision petition. It was contended that there was no bonafides in the title dispute raised by the tenants, and according to the counsel the dispute was raised only to justify the tenant's default in paying the rent. Counsel also submitted that the landlord required eviction of the tenant for the bonafide need urged by her and that in any case the tenants, having subleased to the premises to respondents 8 and 9, are not in occupation of the tenanted premises.
7. We have considered the rival submissions made by the counsel for both parties.
8. The plea of denial of title raised by the petitioners herein is on the basis that Ext.A6 settlement deed is a sham document. The circumstance that is relied on by the tenants in this behalf are that Sundaran continued to prosecute RCA No.171 of 1989

and CRP No.483 of 1994, despite having assigned the property in favour of the respondent, as early as on 24.02.1992, by executing Ext.A6 document No.732/1992 of SRO Mavoor. According to them if there, in fact, has taken place an assignment of title, the assignees would have got themselves impleaded in the proceedings and that such impleadment did not take place. It was also contended that in Exts.A4 and A5 Building Assessment Registers for periods subsequent to 1992, the name of the landlord is shown as Sundaran. According to the tenant if an assignment has taken place, the assignee's name would have been entered in the Building Assessment Register.

9. This contention was considered by the Rent Control Court and it has taken note of the fact that to prove the validity of Ext.A6 settlement deed, the assignee and the assignor have been examined as PWs 1 and PW2 and that their evidence proved that the property has been assigned in favour of the respondent and the court found no evidence to doubt the genuineness of Ext.A6. In regard to their non impleadment in RCA No.171 of 1989 and CRP No.483 of 1994 and the continuation of the proceeding by Sundaran, both these witnesses have explained that the fact of assignment was duly informed to the counsel appearing on behalf of Sundaran in the aforesaid proceedings and that there was omission on the part of the counsel to do the needful in the matter. According to

them, a mistake of the counsel should not be taken as a ground enabling denial of title of the landlord over the petition scheduled premises. This explanation offered by the respondent and evidence tendered in this behalf by PW1 and PW2, who are none other than the respondent herein and Sundaran himself, was satisfactory to the Rent Control Court and the same was accepted. The Rent Control Appellate Authority also considered this matter under point No.1 and was satisfied with the explanation offered by PWs1 and 2. It held that Exts.A4 and A5 Building Assessment Register, cannot take precedence over Ext.A6 settlement deed. On this basis the Appellate Authority also concluded that the denial of title cannot be accepted as bonafide.

10. We see no reason to take a different view in this matter and we also do not find any force in the submission. As already noted while Ext.A6 was of 1992, the Rent Control Proceedings in question was filed only in 2001. If the motive of execution was to tide over the findings of the Rent Control Court in the previous proceedings, by normal standards, the landlord would not have waited for 9 years, as in this case. The tenants have no case that Ext.A6 settlement deed has not been executed and registered in accordance with law and that the transaction is otherwise illegal in any manner. In such a situation, in an eviction proceedings between the landlord and the tenant, the motive behind the execution of the document conferring title

on the landlord cannot be allowed to be gone into. See in this connection the judgments in the case of **Lingala Kondala Rao Vs. Vootukuri Narayana Rao (2003 (1) SCC 672)** and **Salim Vs. Fathima Muhammed (2006 (3) KLT 813 (SC))**. Hence, we cannot accept the contention of the tenant that Ext.A6 is a sham document. As already pointed out the only two circumstances relied on by the tenants have been concurrently rejected by both courts. In such a case and in the absence of anything more, we cannot accept this contention.

- 11.As already noted, one of the grounds urged and concurrently found against the tenants is under Section 11(2)(b) of the Act. Ext.A1 Coolie Kacheet provided for monthly rent of Rs.90/-. Subsequently, by the order dated 29.09.2000 in CRP No. 483 of 1994 the rent was enhanced to Rs.200/- per month w.e.f 01.10.2000. According to the landlord the rent was in arrears at the rate of Rs.90/- per month from 01.10.1988 till 30.09.2000 and thereafter at Rs.200/- per month. RW1, the 3rd respondent testified before the Court that he was prompt in paying the rent and that such payments were made upto date to Sundaran. However, there was no evidence to prove the contention of RW3 regarding payment of rent and they could not even produce any receipt issued by Sundaran acknowledging payment of rent. In Ext.A2 lawyer notice issued on behalf of the landlord, there was a specific allegation regarding arrears of rent. Though notice has been served on

the tenants they had not sent any reply to this notice. On the other hand RW1, during evidence, deposed before Court that it was on account of the correctness of the statements in the notice that reply was not sent. Added to this the Rent Control Court also took note of the fact that the tenants have not chosen to deposit arrears in court also. It is taking into account all these circumstances that the Rent Control Court held that respondents 1 to 7 had not adduced any cogent and convincing evidence before the Court to prove payment of rent. In view of the above circumstances, the Rent Control Court concluded that there was willful non payment of rent by the tenants, entitling the landlord to get an order of eviction under Section 11(2) (b) of the Act. In the appeal filed by the tenants, this contention has been considered by the Appellate Authority under point No.5 and the Appellate Authority confirmed the findings of the Rent Control Court.

12.As we have already noticed, the tenants have no case that they have paid rent to the respondent landlord. On the other hand, they were contending that they were continuing to pay the rent to Sundaran, which they could not prove before the Rent Control Court or the Appellate Authority. In view of the finding that Ext.A6 was a valid document conveying title the respondent herein and as even according to the tenants there has not been any payment of rent to that landlord, a case for eviction under Section 11 (2) (b) has been made out and the

findings of the Rent Control Court, as affirmed by the Appellate Authority does not call for any interference.

13. The landlord sought eviction of the tenant under Section 11(3) also. It was urged that the premises was required for the bonafide occupation of PW3, Sajeew Kumar, the dependant son of the petitioner landlord. The Rent Control Court has noted that the qualification and capacity of PW3 was not disputed by the respondents. Exts.A12 to A14 were produced and marked to prove the qualification of PW3. The Rent Control Court has also recorded that the bonafide need for the petitioner of the scheduled premises is not seriously disputed by the respondents and that they had no case that the petitioners were having any other vacant premises in the locality in their possession and that this has been confessed by RW1 during evidence. Examining the applicability of the first proviso to Section 11(3), the Rent Control Court has found that the tenants had not produced any document to prove that they were earning their livelihood mainly from the income from the business carried on in the premises. No licence, account books or any such documents were produced and from the evidence of RW1 it was clear that respondents 1 to 7 were employed elsewhere earning independent income. In regard to the applicability of the second proviso the non availability of suitable buildings in the locality for shifting their business was also not proved by the tenants. In the evidence RW1 also

stated that no enquiry in this behalf was made. It was on the evidence as above that the Rent Control Court found that the need urged by the landlord was bonafide one and that the tenants were not entitled to the benefit of the provisos to Section 11(3).

14.The Rent Control Appellate Authority examined the findings of the Rent Control Court under Section 11(3). After making detailed reference to the evidence of PWs 1 and 3 and Exts. A12 and A13 certificates regarding the qualification of PW3, the Appellate Authority came to the conclusion that there was nothing to suspect the bonafide need urged by the landlord.

15.Having considered the above findings of the Rent Control Court and the Appellate Authority, we are in agreement with the conclusions arrived at by both these authorities. The tenants have not even seriously disputed the bonafide need of the landlord, capacity and competence of PW3 to establish and run the business. They have also not succeeded in proving their entitlement to the benefit of the 2nd proviso to Section 11 (3). In such situation, the findings of the courts below are only to be upheld and we do so.

16.The other remaining ground urged was sublease as provided under Section 11(4)(i) of the Act. It is the accepted position that Ext.A1 Coolie Kacheet contained a prohibition against

sublease and the case set up by the landlord was that the premises have been sublet to respondents 8 and 9 without the consent or permission of the landlord. The tenants contended that 8th respondent is a housewife and that the 9th respondent was working in the industry along with others. The evidence as disclosed in the case would prove otherwise. Ext.A2 notice issued by the landlord was addressed to the 8th respondent at the tenanted premises and was accepted by her. This was testified by RW3, the 9th respondent, her son. Although, this notice contained the allegation of sublease, the notice was not replied by the 8th respondent. Further, the Secretary of Peruvayal Panchayat examined as RW2 also deposed that according to Ext.A5 assessment register the 8th respondent was shown as the person in possession. It was in view of Exts.A1, A2 and A5 and in the light of the evidence of RWs2 and 3 that the Rent Control Court found that the 8th respondent was running industry without the consent of the landlord and ordered eviction under Section 11(4)(i) of the Act.

17.The issue of sub lease has been considered by the Appellate Authority under point No.1 and the taking note of the above circumstances, and the evidence of RW1 that the licence for running the industry was not in his name and that he was unaware as to whether in the licence was in the name of the 8th respondent, that the Appellate Authority confirmed the findings of the Rent Control Court. The evidence as discussed by the

Rent Control Court and the Appellate Authority discloses a clear case of sublease entitling the landlord to order of eviction under Section 11(4)(i) of the Act. We have no hesitation in endorsing the correctness of the findings of fact arrived at concurrently by both the authorities.

In the result, we find no merit in this revision petition and the petition will stand dismissed without any order as to costs.

P.R.RAMAN, JUDGE.

ANTONY DOMINIC, JUDGE.

Rp